



July 28, 1999

Mr. Stephen G. Wohleb  
Davis & Wilkerson, P.C.  
P.O. Box 2283  
Austin, Texas 78768

OR99-2126

Dear Mr. Wohleb:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126100.

The Bowie Hospital Authority (the "authority"), which you represent, received a request for the "[m]inutes from meetings of the governing board for Bowie Hospital Authority held during 1998." You claim that the requested information is excepted from disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the representative sample of documents at issue.<sup>1</sup>

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991).

You explain that a doctor has filed suit against the authority alleging several causes of action, including breach of contract and deprivation of procedural and substantive due process. You have submitted the petition, *Kerne v. Bowie Hospital District, et. al.*, No. 98-50543-367 (367<sup>th</sup> Dist. Ct., Denton County, Tex., filed July 29, 1998). Thus, you have shown that litigation is pending. However, after reviewing your arguments and the submitted information, we conclude that you have not established that the information relates to the pending litigation. Thus, you may not withhold the requested information under section 552.103.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHLnc

Ref: ID# 126100

Encl.: Submitted documents

cc: Ms. Grace Weatherly  
Wood, Thacker & Weatherly, P.C.  
513 West Oak  
Denton, Texas 76201  
(w/o enclosures)